

**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

STATE OF TEXAS, *ET. AL.*,

Plaintiffs,

v.

Case No.: 4:20-cv-02021

RISING EAGLE CAPITAL GROUP LLC, *et. al.*,

Defendants.

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**DEFENDANT HEALTH ADVISORS OF AMERICA, INC.'S AMENDED ANSWER AND  
AFFIRMATIVE DEFENSES TO PLAINTIFFS' SECOND AMENDED COMPLAINT**

COMES NOW the Defendant Health Advisors of America, Inc. ("HAA"), by and through its undersigned legal counsel, and hereby files its Answer and Affirmative Defenses to Plaintiffs' Second Amended Complaint (*D.E.* No. 56) as follows:

1. Admitted for jurisdictional purposes only, but denied as to the remainder of the allegation and any inferences therefrom.
2. Admitted for venue purposes only, but denied as to the remainder of the allegation and any inferences therefrom.
3. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is hereby denied.
4. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

**PLAINTIFFS**

5. This paragraph asserts legal conclusions for which no answer is necessary; To the extent an answer is necessary, the cited statutes speak for themselves but Defendant HAA denies

any inference therefrom, Defendant HAA lacks sufficient information to admit or deny the balance of the allegation, and therefore same is denied.

6. This paragraph asserts legal conclusions for which no response is necessary; To the extent a response is necessary, the cited statutes speak for themselves but Defendant HAA denies any inference therefrom, Defendant HAA lacks sufficient information to admit or deny the balance of the allegation, and therefore same is denied.

7. This paragraph asserts legal conclusions for which no response is necessary; To the extent a response is necessary, the cited statutes speak for themselves but Defendant HAA denies any inference therefrom, Defendant HAA lacks sufficient information to admit or deny the balance of the allegation, and therefore same is denied.

8. This paragraph asserts legal conclusions for which no response is necessary; To the extent a response is necessary, the cited statutes speak for themselves but Defendant HAA denies any inference therefrom, Defendant HAA lacks sufficient information to admit or deny the balance of the allegation, and therefore same is denied.

9. This paragraph asserts legal conclusions for which no response is necessary; To the extent a response is necessary, the cited statutes speak for themselves but Defendant HAA denies any inference therefrom, Defendant HAA lacks sufficient information to admit or deny the balance of the allegation, and therefore same is denied.

10. This paragraph asserts legal conclusions for which no response is necessary; To the extent a response is necessary, the cited statutes speak for themselves but Defendant HAA denies any inference therefrom, Defendant HAA lacks sufficient information to admit or deny the balance of the allegation, and therefore same is denied.

11. This paragraph asserts legal conclusions for which no response is necessary; To the extent a response is necessary, the cited statutes speak for themselves but Defendant HAA denies any inference therefrom, Defendant HAA lacks sufficient information to admit or deny the balance of the allegation, and therefore same is denied.

12. This paragraph asserts legal conclusions for which no response is necessary; To the extent a response is necessary, the cited statutes speak for themselves but Defendant HAA denies any inference therefrom, Defendant HAA lacks sufficient information to admit or deny the balance of the allegation, and therefore same is denied.

### **DEFENDANTS**

13. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

14. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

15. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

16. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

17. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

18. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

19. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

20. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

21. Admitted that Defendant Health Advisors of America, Inc. was a Florida Corporation, with a filing date of April 10, 2017 and an effective date of April 3, 2017; the balance of the allegation is denied as phrased.

22. Admitted.

23. Denied that Defendant HAA has directly transacted business in Southern District of Texas; the balance of the allegation is denied.

24. Admitted.

25. Denied that Defendant Smith has directly transacted business in Southern District of Texas; the balance of the allegation is denied.

26. Admitted.

27. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

### **SUMMARY OF ALLEGATIONS**

28. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

29. Admitted that Plaintiff States of Arkansas, Indiana Michigan, North Carolina, North Dakota, Ohio and Texas have made allegations against Defendant HAA, the substance and all inferences therefrom and the balance of the allegation are hereby denied.

30. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

31. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

32. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

33. Admitted that Plaintiff States of Arkansas, Indiana Michigan, North Carolina, North Dakota, Ohio and Texas have made allegations against Defendant HAA, the substance and all inferences therefrom and the balance of the allegation are hereby denied.

**THE TELEPHONE CONSUMER PROTECTION ACT**

34. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, the cited statute speaks for itself but Defendant HAA denies any inference therefrom and lacks sufficient information to admit or deny the balance of the allegation, and therefore same is denied.

35. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

36. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

37. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

38. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, the cited statute speaks for itself but Defendant HAA denies any inference therefrom and lacks sufficient information to admit or deny the balance of the allegation, and therefore same is denied.

39. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, the cited statute speaks for itself but Defendant HAA denies any inference therefrom and lacks sufficient information to admit or deny the balance of the allegation, and therefore same is denied.

40. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, the cited statute speaks for itself but Defendant HAA denies any inference therefrom and lacks sufficient information to admit or deny the balance of the allegation, and therefore same is denied.

41. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, the cited statute speaks for itself but Defendant HAA denies any inference therefrom and lacks sufficient information to admit or deny the balance of the allegation, and therefore same is denied.

42. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, the cited statute speaks for itself but Defendant HAA denies any inference therefrom and lacks sufficient information to admit or deny the balance of the allegation, and therefore same is denied.

43. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, the cited statute speaks for itself but Defendant HAA denies any inference therefrom and lacks sufficient information to admit or deny the balance of the allegation, and therefore same is denied.

44. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, the cited statute speaks for itself but Defendant HAA denies any

inference therefrom and lacks sufficient information to admit or deny the balance of the allegation, and therefore same is denied.

45. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, the cited statute speaks for itself but Defendant HAA denies any inference therefrom and lacks sufficient information to admit or deny the balance of the allegation, and therefore same is denied.

### **The Telemarketing Sales Rule**

46. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, the cited statute speaks for itself but Defendant HAA denies any inference therefrom and lacks sufficient information to admit or deny the balance of the allegation, and therefore same is denied.

47. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, the cited statute speaks for itself but Defendant HAA denies any inference therefrom and lacks sufficient information to admit or deny the balance of the allegation, and therefore same is denied.

48. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, the cited statute speaks for itself but Defendant HAA denies any inference therefrom and lacks sufficient information to admit or deny the balance of the allegation, and therefore same is denied.

49. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, Defendant HAA denies lacks sufficient information to admit or deny the allegation, and therefore same is denied.

50. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, the cited statute speaks for itself but Defendant HAA denies any inference therefrom and lacks sufficient information to admit or deny the balance of the allegation, and therefore same is denied.

51. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, the cited statute speaks for itself but Defendant HAA denies any inference therefrom and lacks sufficient information to admit or deny the balance of the allegation, and therefore same is denied.

52. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, the cited statute speaks for itself but Defendant HAA denies any inference therefrom and lacks sufficient information to admit or deny the balance of the allegation, and therefore same is denied.

53. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, the cited statute speaks for itself but Defendant HAA denies any inference therefrom and lacks sufficient information to admit or deny the balance of the allegation, and therefore same is denied.

54. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, the cited statute speaks for itself but Defendant HAA denies any inference therefrom and lacks sufficient information to admit or deny the balance of the allegation, and therefore same is denied.

55. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, the cited statute speaks for itself but Defendant HAA denies any



inference therefrom and lacks sufficient information to admit or deny the balance of the allegation, and therefore same is denied.

56. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, the cited statute speaks for itself but Defendant HAA denies any inference therefrom and lacks sufficient information to admit or deny the balance of the allegation, and therefore same is denied.

57. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, the cited statute speaks for itself but Defendant HAA denies any inference therefrom and lacks sufficient information to admit or deny the balance of the allegation, and therefore same is denied.

58. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, the cited statute speaks for itself but Defendant HAA denies any inference therefrom and lacks sufficient information to admit or deny the balance of the allegation, and therefore same is denied.

59. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, the cited statute speaks for itself but Defendant HAA denies any inference therefrom and lacks sufficient information to admit or deny the balance of the allegation, and therefore same is denied.

60. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, the cited statute speaks for itself but Defendant HAA denies any inference therefrom and lacks sufficient information to admit or deny the balance of the allegation, and therefore same is denied.

61. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, the cited statute speaks for itself but Defendant HAA denies any inference therefrom and lacks sufficient information to admit or deny the balance of the allegation, and therefore same is denied.

62. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, the cited statute speaks for itself but Defendant HAA denies any inference therefrom and lacks sufficient information to admit or deny the balance of the allegation, and therefore same is denied.

63. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, the cited statute speaks for itself but Defendant HAA denies any inference therefrom and lacks sufficient information to admit or deny the balance of the allegation, and therefore same is denied.

**RISING EAGLE DEFENDANTS' BUSINESS PRACTICES**

64. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

65. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

66. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

67. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

68. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

**RISING EAGLE**

69. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

70. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

71. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

72. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

73. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

**JSQUARED TELECOM LLC**

74. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

75. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

76. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

77. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

78. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

a. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

b. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

79. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

#### **SPILLER AND MEARS**

80. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

81. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

82. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

83. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

84. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

85. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

86. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

87. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

88. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

89. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

90. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

91. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

92. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

93. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

94. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

95. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

96. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

97. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

98. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

99. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

100. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

101. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

102. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

103. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

104. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

**RISING EAGLE DEFENDANTS'  
ILLEGAL TELEMARKETING PRACTICES**

105. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

106. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

107. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

108. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

109. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

110. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

111. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

112. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

113. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

114. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

115. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

116. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

117. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

118. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

119. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

120. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

121. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

122. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

123. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

124. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

125. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

126. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

127. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

128. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

129. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

130. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

131. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.



132. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

133. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

134. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

135. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

#### **COMMON ENTERPRISE**

136. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

137. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

138. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

139. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

140. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

#### **PIERCING THE CORPORATE VEIL**

141. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

142. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

143. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

144. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

145. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

146. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

147. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

148. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

149. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

150. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

151. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

#### **HEALTH ADVISORS DEFENDANTS' BUSINESS PRACTICES**

152. Defendant HAA denies the allegations as to itself and lacks sufficient information to admit or deny the balance of the allegation, and therefore same is denied.

153. Admitted that Defendant Smith was the President of Defendant Health Advisors of America, Inc.; the balance of the allegations is denied.

154. Denied.

155. Denied.

156. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

157. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

158. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

159. Defendant HAA denies the allegations as to itself and lacks sufficient information to admit or deny the balance of the allegation, and therefore same is denied.

160. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

161. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

162. Defendant HAA denies the allegations as to itself and lacks sufficient information to admit or deny the balance of the allegation, and therefore same is denied.

163. Admitted.

164. Admitted that Defendant HAA spoke with Rising Eagle Defendants, but this Defendant lacks sufficient information to admit or deny the balance of the allegation, and therefore same is denied.

165. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

166. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

167. Defendant HAA lacks sufficient information to admit or deny the allegation, and therefore same is denied.

**VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**

**COUNT I**

168. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, Defendant HAA lacks sufficient information to admit or deny, and therefore same is denied.

169. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, Defendant HAA lacks sufficient information to admit or deny, and therefore same is denied.

**COUNT II**

170. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, Defendant HAA lacks sufficient information to admit or deny, and therefore same is denied.

171. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, Defendant HAA lacks sufficient information to admit or deny, and therefore same is denied.

**COUNT III**

172. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, Defendant HAA lacks sufficient information to admit or deny, and therefore same is denied.

173. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, Defendant HAA lacks sufficient information to admit or deny, and therefore same is denied.

174. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, Defendant HAA lacks sufficient information to admit or deny, and therefore same is denied.

#### **COUNT IV**

175. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, Defendant HAA lacks sufficient information to admit or deny, and therefore same is denied.

176. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, Defendant HAA lacks sufficient information to admit or deny, and therefore same is denied.

#### **COUNT V**

177. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, Defendant HAA lacks sufficient information to admit or deny, and therefore same is denied.

178. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, Defendant HAA lacks sufficient information to admit or deny, and therefore same is denied.

**COUNT VI**

179. Denied.

180. Denied.

**COUNT VII**

181. Denied.

182. Denied.

**COUNT VIII**

183. Denied.

184. Denied.

185. Denied.

**COUNT IX**

186. Denied.

187. Denied.

**COUNT X**

188. Denied.

189. Denied.

**VIOLATIONS OF THE TELEMARKETING SALES RULE**

**COUNT XI**

190. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, Defendant HAA lacks sufficient information to admit or deny, and therefore same is denied.

191. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, Defendant HAA lacks sufficient information to admit or deny, and therefore same is denied.

192. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, Defendant HAA lacks sufficient information to admit or deny, and therefore same is denied.

193. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, Defendant HAA lacks sufficient information to admit or deny, and therefore same is denied.

## **COUNT XII**

194. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, Defendant HAA lacks sufficient information to admit or deny, and therefore same is denied.

195. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, Defendant HAA lacks sufficient information to admit or deny, and therefore same is denied.

196. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, Defendant HAA lacks sufficient information to admit or deny, and therefore same is denied.

197. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, Defendant HAA lacks sufficient information to admit or deny, and therefore same is denied.

## **COUNT XIII**

198. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, Defendant HAA lacks sufficient information to admit or deny, and therefore same is denied.

199. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, Defendant HAA lacks sufficient information to admit or deny, and therefore same is denied.

200. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, Defendant HAA lacks sufficient information to admit or deny, and therefore same is denied.

201. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, Defendant HAA lacks sufficient information to admit or deny, and therefore same is denied.

#### **COUNT XIV**

202. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, Defendant HAA lacks sufficient information to admit or deny, and therefore same is denied.

203. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, Defendant HAA lacks sufficient information to admit or deny, and therefore same is denied.

204. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, Defendant HAA lacks sufficient information to admit or deny, and therefore same is denied.



205. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, Defendant HAA lacks sufficient information to admit or deny, and therefore same is denied.

#### **COUNT XV**

206. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, Defendant HAA lacks sufficient information to admit or deny, and therefore same is denied.

207. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, Defendant HAA lacks sufficient information to admit or deny, and therefore same is denied.

208. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, Defendant HAA lacks sufficient information to admit or deny, and therefore same is denied.

209. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, Defendant HAA lacks sufficient information to admit or deny, and therefore same is denied.

#### **COUNT XVI**

210. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, Defendant HAA lacks sufficient information to admit or deny, and therefore same is denied.

211. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, Defendant HAA lacks sufficient information to admit or deny, and therefore same is denied.

212. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, Defendant HAA lacks sufficient information to admit or deny, and therefore same is denied.

213. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, Defendant HAA lacks sufficient information to admit or deny, and therefore same is denied.

### **VIOLATIONS OF STATE MARKETING LAWS**

#### **COUNT XVII**

214. Defendant HAA restates and incorporates its answers to paragraphs 1 through 213, inclusive, as if fully stated herein.

215. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, the cited statutes speak for themselves but Defendant HAA denies any inference therefrom and any allegations as to itself, Defendant HAA lacks sufficient information to admit or deny the balance of the allegation, and therefore same is denied.

216. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, the cited statutes speak for themselves but Defendant HAA denies any inference therefrom and any allegations as to itself, Defendant HAA lacks sufficient information to admit or deny the balance of the allegation, and therefore same is denied.

217. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, the cited statutes speak for themselves but Defendant HAA denies any inference therefrom and any allegations as to itself, Defendant HAA lacks sufficient information to admit or deny the balance of the allegation, and therefore same is denied.

**COUNT XVIII**

218. Defendant HAA restates and incorporates its answers to “the facts above” as if fully stated herein.

219. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, the cited statutes speak for themselves but Defendant HAA denies any inference therefrom, Defendant HAA lacks sufficient information to admit or deny the balance of the allegation, and therefore same is denied.

220. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, the cited statutes speak for themselves but Defendant HAA denies any inference therefrom and any allegations as to itself, Defendant HAA lacks sufficient information to admit or deny the balance of the allegation, and therefore same is denied.

221. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, the cited statutes speak for themselves but Defendant HAA denies any inference therefrom and any allegations as to itself, Defendant HAA lacks sufficient information to admit or deny the balance of the allegation, and therefore same is denied.

222. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, the cited statutes speak for themselves but Defendant HAA denies any inference therefrom and any allegations as to itself, Defendant HAA lacks sufficient information to admit or deny the balance of the allegation, and therefore same is denied.

223. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, the cited statutes speak for themselves but Defendant HAA denies any inference therefrom and any allegations as to itself, Defendant HAA lacks sufficient information to admit or deny the balance of the allegation, and therefore same is denied.

**COUNT XIX**

224. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, the cited statutes speak for themselves but Defendant HAA denies any inference therefrom and any allegations as to itself, Defendant HAA lacks sufficient information to admit or deny the balance of the allegation, and therefore same is denied.

225. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, the cited statutes speak for themselves but Defendant HAA denies any inference therefrom and any allegations as to itself, Defendant HAA lacks sufficient information to admit or deny the balance of the allegation, and therefore same is denied.

226. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, the cited statutes speak for themselves but Defendant HAA denies any inference therefrom and any allegations as to itself, Defendant HAA lacks sufficient information to admit or deny the balance of the allegation, and therefore same is denied.

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any inference therefrom and any allegations as to itself, Defendant HAA lacks sufficient information to admit or deny the balance of the allegation, and therefore same is denied.

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#### **COUNT XX**

234. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, the cited statutes speak for themselves but Defendant HAA denies any inference therefrom and any allegations as to itself, Defendant HAA lacks sufficient information to admit or deny the balance of the allegation, and therefore same is denied.

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## **COUNT XXI**

238. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, the cited statutes speak for themselves but Defendant HAA denies any inference therefrom and any allegations as to itself, Defendant HAA lacks sufficient information to admit or deny the balance of the allegation, and therefore same is denied.

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any inference therefrom and any allegations as to itself, Defendant HAA lacks sufficient information to admit or deny the balance of the allegation, and therefore same is denied.

**COUNT XXII**

241. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, Defendant HAA lacks sufficient information to admit or deny, and therefore same is denied.

242. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, the cited statutes speak for themselves but Defendant HAA denies any inference therefrom and any allegations as to itself, Defendant HAA lacks sufficient information to admit or deny the balance of the allegation, and therefore same is denied.

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**COUNT XXII**

245. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, the cited statutes speak for themselves but Defendant HAA denies any inference therefrom and any allegations as to itself, Defendant HAA lacks sufficient information to admit or deny the balance of the allegation, and therefore same is denied.

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#### **COUNT XXIV**

250. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, the cited statutes speak for themselves but Defendant HAA denies any inference therefrom and any allegations as to itself, Defendant HAA lacks sufficient information to admit or deny the balance of the allegation, and therefore same is denied.

#### **COUNT XXV**



251. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, the cited statutes speak for themselves but Defendant HAA denies any inference therefrom and any allegations as to itself, Defendant HAA lacks sufficient information to admit or deny the balance of the allegation, and therefore same is denied.

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#### **COUNT XXVI**

253. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, the cited statutes speak for themselves but Defendant HAA denies any inference therefrom and any allegations as to itself, Defendant HAA lacks sufficient information to admit or deny the balance of the allegation, and therefore same is denied.

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256. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, Defendant HAA lacks sufficient information to admit or deny, and therefore same is denied.

#### **COUNT XXVII**

257. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, the cited statutes speak for themselves but Defendant HAA denies any inference therefrom and any allegations as to itself, Defendant HAA lacks sufficient information to admit or deny the balance of the allegation, and therefore same is denied.

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259. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, Defendant HAA lacks sufficient information to admit or deny, and therefore same is denied.

#### **COUNT XXVIII**

260. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, the cited statutes speak for themselves but Defendant HAA denies any inference therefrom and any allegations as to itself, Defendant HAA lacks sufficient information to admit or deny the balance of the allegation, and therefore same is denied.

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any inference therefrom and any allegations as to itself, Defendant HAA lacks sufficient information to admit or deny the balance of the allegation, and therefore same is denied.

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#### **COUNT XXIX**

266. Defendant HAA restates and incorporates its answers to paragraphs 153 through 158, inclusive, as if fully stated herein.

267. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, the cited statutes speak for themselves but Defendant HAA denies

any inference therefrom and any allegations as to itself, Defendant HAA lacks sufficient information to admit or deny the balance of the allegation, and therefore same is denied.

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### **COUNT XXX**

270. Defendant HAA restates and incorporates its answers to paragraphs 153 through 162, inclusive, as if fully stated herein.

271. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, the cited statutes speak for themselves but Defendant HAA denies any inference therefrom and any allegations as to itself, Defendant HAA lacks sufficient information to admit or deny the balance of the allegation, and therefore same is denied.

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### **COUNT XXXI**

275. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, the cited statutes speak for themselves but Defendant HAA denies any inference therefrom and any allegations as to itself, Defendant HAA lacks sufficient information to admit or deny the balance of the allegation, and therefore same is denied.

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## **COUNT XXXII**

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### **COUNT XXXIII**

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### **CONSUMER INJURY**

290. This paragraph asserts a conclusion of law to which no answer is required; to the extent an answer is required, the cited statutes speak for themselves but Defendant HAA denies any inference therefrom and any allegations as to itself, Defendant HAA lacks sufficient information to admit or deny the balance of the allegation, and therefore same is denied.

### **RESPONSE TO PLAINTIFFS'** **AD DAMNUM CLAUSE/PRAYER FOR RELIEF**

Responding to the *ad damnum* clause/prayer for relief in Plaintiff's Second Amended Complaint, Defendant HAA denies that it is liable to Plaintiffs in any sum whatsoever and that Plaintiffs are entitled to relief against him.

### **GENERAL DENIAL**

Defendant HAA hereby denies all allegations of the Plaintiff's Second Amended Complaint that are not otherwise specifically admitted or responded to above.

### **AFFIRMATIVE DEFENSES**

1. Plaintiffs lack Article III standing because the citizens they represent incurred no injury or actual harm or damages. *See, e.g., Salcedo v. Hanna*, 936 F.3d 1162, 1172 (11th Cir. 2019).

2. Plaintiffs fail to state a claim against Defendant upon which relief can be granted because, among other reasons, on information and belief, the calling party was given prior express consent to call the number(s) at issue, and never revoked that consent. *See, e.g., Tyler v. Mirand Response Sys.*, No. H-18-1095, 2019 U.S. Dist. LEXIS 81808, at \*10 (S.D. Tex. May 15, 2019) (granting judgment in favor of defendant where calls were made with prior express consent and Plaintiff failed to prove revocation or use of an ATDS).



3. Although Defendant specifically denies it has any liability with respect to Plaintiff's claims and allegations, Defendant asserts that it has not willfully violated any statute and any violation(s) that may have occurred were unintentional as the party responsible for the alleged call(s) received prior express consent to call the phone number at issue.

4. Any alleged damages suffered by any party resulted from the acts or omissions of third parties who were not agents of Defendant, over whom Defendant exercised no control or authority and for whose conduct Defendant is not responsible.

5. Plaintiffs' claims are barred to the extent the called parties were not charged for the call(s) at issue pursuant to 47 U.S.C. § 227(b)(1)(A)(iii).

6. Plaintiffs' claims are barred to the extent Defendant satisfies the requirements set forth at 47 C.F.R. §64.1200(c)(2)(i), as amended.

7. The claims against Defendant are misjoined and therefore Defendant should be dismissed and/or the claims against Defendant severed.

8. Plaintiffs' Complaint and each and every Count of the Complaint fail to state a claim upon which relief may be granted.

9. Plaintiffs' claims are barred insofar as the Telephone Consumer Protection Act was unconstitutional at the time some or all of the alleged violations occurred

### **RESERVATION OF DEFENSES**

This Defendant expressly reserves the right to amend and/or add additional defenses and affirmative defenses as discovery and investigation continues.

**DEFENDANT'S AD DAMNUM CLAUSE/PRAYER FOR RELIEF**

WHEREFORE Defendant Health Advisors of America, Inc. respectfully requests that this Honorable Court enter judgment in its favor and against Plaintiffs on all claims asserted against him in this matter, awarding him attorneys' fees, costs, and expenses incurred in defending the instant matter and for any other relief this Court deems just and appropriate.

**DEMAND FOR JURY TRIAL**

This Defendant demands a trial by jury of all matters so triable by right.

Date: November 16, 2021

Respectfully submitted,

/s/ Anthony G. Franqui  
Anthony G. Franqui, Esq.  
Admitted *Pro Hac Vice*  
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*Counsel for Defendants Michael T. HAA, Jr. and  
Health Advisors of America, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on November 16, 2021, I electronically filed the foregoing with the Clerk of Court, using CM/ECF and in addition, that the foregoing document is being served this day on all counsel of record and all parties on the attached Service List via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing

/s/Anthony G. Franqui

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*Counsel for Defendants Michael T. HAA, Jr. and  
Health Advisors of America, Inc.*

**SERVICE LIST**

***STATE OF TEXAS, et. al., v. RISING EAGLE CAPITAL GROUP LLC et. al.,  
USDC SD TX Case No.: 4:20-cv-02021***

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